



Idaho's Citizen Commission for Reapportionment

Public Meeting
Tuesday, June 7, 2011
Capitol Building
Capitol Auditorium
Boise, Idaho

Commission Business Meeting

Jeff Youtz, Director of the Legislative Services Office, welcomed everyone to the meeting at 8:30 a.m., Tuesday, June 7, 2011 in the Capitol Auditorium and asked the Honorable Secretary of State, **Ben Ysursa**, to officially convene the Commission on Reapportionment.

Mr. Ysursa welcomed the commissioners and discussed their arduous task at hand and their time requirement. He joked that he is pretty sure that he will be sued, but hopefully they can get the suits over and done to have the districts in place by filing time in March of next year. He then gave the commissioners some words of wisdom from St. Francis, "may you have the serenity to accept the things you cannot change, may you have the courage to change the things you can, and the wisdom to know the difference." With that he then read the order, pursuant to section 2, Article III of the Constitution of the State of Idaho, and Section 72-1501 of the Idaho Code, convening a commission for reapportionment for the State of Idaho. A copy of the order is available in the office of the commission. **Mr. Ysursa** also administered the oath of office to the members of the commission, **Allen Andersen** of Pocatello, Idaho; **Lou Esposito** of Boise, Idaho; **Lorna Finman** of Rathdrum, Idaho; **Evan Frasure** of Pocatello, Idaho, **Julie Kane** of Lapwai, Idaho; and **George R. Moses** of Boise, Idaho.

Following the administration of the oath of office, **Mr. Jeff Youtz** congratulated the commissioners and thanked them on the behalf of the citizens of Idaho for their willingness to take on this historic project, which happens only once every 10 years, but is vital to the citizens. He explained that the Legislative Council, which is the governing board of the legislature, is statutorily responsible for providing the commission with staff, facilities and resources needed for the commission to accomplish their goals. A nonpartisan staff has been assigned to help the commission in any way that they can. They have been preparing for the commission for nearly three years in terms of picking out software, facilities, and

purchasing equipment. He then introduced the non partisan staff which has been mostly responsible for preparing this last three years, Kristin Ford, Manager of the Legislative Services Office Legislative Research Library, and Keith Bybee, Senior Budget and Policy Analyst for the Joint Finance Appropriations Committee. Both Kristin and Keith have been involved with reapportionment in the past. Cyd Gaudet has been retained for the commission staff as an administrative assistant. A GIS Technical Consultant, Todd Cutler, has been hired to assist the commissioners and their partisan staff with technical questions. Also available is Michael Ellis who is currently interning with the staff.

Mr. Youtz explained that the non partisan staff is here to assist and make the commission's work as easy as possible. He pointed out that they will not be involved in the secure rooms that have been set up for the commission; however they are available to answer any questions. **Mr. Youtz** then did a brief overview of the agenda. He explained that the agenda had to be set up to facilitate the first few days for the commission and to comply with public notice requirements, however they now will be making the agenda and scheduling decisions from this point forward. Following the agenda review **Mr. Youtz** discussed the secure rooms which only the commissioners and their partisan staff will have access to. He advised the commission that the Senate Minority Leader and the Speaker of the House had drawn straws to pick these rooms for the commission's use. The Democrats had chosen the room on the Senate side and the Republicans had chosen the room on the House side.

The next item was the selection of co-chairmen. **Commissioner Moses** advised that the idea of co-chairs had seemed to serve the prior commission well and suggested that this commission follow this concept. **Commissioner Finman** nominated **Commissioner Frasure** to serve as a co-chairman and Commissioner Kane nominated **Commissioner Anderson** to serve as a co-chairman. All present voted in favor and **Co-Chairman Frasure** deferred to Co-Chairman **Andersen** to chair for the remainder of the meeting.

Mr. Youtz then introduced **Dr. Gary Moncrief**, professor of Political Science at Boise State University, and a nationally recognized expert on legislative and election processes, to provide an overview and history of redistricting for the committee members. **Dr. Moncrief** first explained the concepts of reapportionment versus redistricting, and explained that although there is a tendency to use the terms interchangeably they are not interchangeable. He explained that the commission is actually redistricting, which is redrawing the actual boundary lines to put roughly the same number of people in each district after the census takes place. He also discussed malapportionment which occurs over

time due to population shifts. He then discussed some important court cases in the history of reapportionment and redistricting. The first was *Colegrove v Green* in 1946 which involved the malapportioned congressional districts in Illinois. In this case the U.S. Supreme Court claimed it had no jurisdiction, and it is from this case that we take the famous quote from Justice Frankfurter that, "Courts ought not to enter this political thicket". **Dr. Moncrief** then reviewed the cases involved in what he calls the "reapportionment revolution" of the 1960's, during which time the U.S. Supreme Court became involved in this issue and which form the basis of the law as we have at this time. He also covered the key issues from this series of cases which were justiciability; concern with vote discrimination against minorities; "one person, one vote" = equipopulus districts; no 'federal analogy': states cannot apportion a chamber on any basis other than population; and standards for equipopulous districts are different for congressional and state legislative districts. The *Reynolds v. Sims* case (1964) changed the way state senates were apportioned in many states, where the counties were used as the basic unit of representation. In many states, every county had a senator, akin to the U.S. Senate having two senators from every state. The *Reynolds* court found that the local government – state relationship is not the same as the state – federal relationship because counties are not sovereign units of government, as states are. Commissioner Moses inquired whether this case abolished any geographical standard as the basis of representation and only allows the population standard? Dr. Moncrief clarified that it established the population as the *primary* basis of representation, but perhaps does not abolish other standards. **Dr. Moncrief** then pointed out the distinction that while congressional districts within a state must have almost exactly the same number of people in each district, state legislative districts are presumed to have some latitude of up to a 10% deviation. Congressional District No. 1 has almost 100,000 more people in it than Congressional District No. 2, so one of the Commission's tasks will be to find a line to shift to the west to get the same number of people in each district. The congressional standard is very high; you have to have virtually the same number of people in each district. In response to a question from **Commissioner Frasure** regarding the deviation in the Idaho Congressional districts following the prior reapportionment, Dr. Moncrief stated he thought it was very close, down to one or two people. Ms. Ford said she thought it was closer to 1% but that they would obtain the exact figure for the commission. Dr. Moncrief said that Ms. Ford might be right, but 1% would be a very high deviation for a congressional district, and the U.S. Supreme Court has struck down congressional plans with such a high deviation. At that point, it comes down to the justification for that kind of deviation. [**Mr. Bybee** later advised that the 2002 Idaho congressional plan deviation was 0.6% or 3,595 people.]

Professor Moncrief then illustrated how the reapportionment revolution changed the state legislatures in the western states by showing the percentage of the population required to elect a majority before and after these decisions. He also discussed representation in senates and how Article I, Section 3 of the U.S. Constitution creates a rural state bias in the U.S. Senate. He pointed out that this used to be the case in the state senates as well prior to the case of *Reynolds v. Sims*.

Dr. Moncrief then went over a short history of Idaho redistricting by discussing five major cases in which plans were struck down by the courts. These were *Hearne v Smylie* in 1964, *Summers v Cenarrusa* in 1973, *Hellar v Cenarrusa* I, II, and III in 1983-1984, *Smith v Idaho Commission for Redistricting* in 2001, and *Bingham County v ICR* in 2002. In every case these plans were struck down because the deviations, although justified by the protection of county boundaries, exceeded 10%. In addition, there was a case brought by the Idaho Hispanic Coalition in the 1990s. That plan was under 10% deviation, and the court upheld the plan. **Dr. Moncrief** then addressed the current situation following the census. The ideal population at this point for legislative districts would be 44,788 which is a growth of roughly 8,000 people in each district. Some districts grew by more than that and some actually lost population. An acceptable range would be 42,548 to 47,024 assuming an acceptable deviation of 10% (and that's an assumption but is not an absolute guarantee) The current range is 34,066 to 76,940; and as such they are now malapportioned. He then discussed some principles that the commission needs to attend to as follows; There are to be between 30 and 35 districts. Oddly shaped districts are to be avoided if possible. Counties should not be divided more than necessary. There should be an attempt to preserve communities of interest and traditional neighborhoods. A permissible deviation between the largest and smallest districts is generally considered to be 10%. He then discussed the six factors which make redistricting different in the west which are: substantial population growth, small legislative chambers, large geographic area, direct democracy, legislatures less likely to control the redistricting process, and demographics. **Dr. Moncrief** then discussed the other western states of Alaska, Arizona, California, Colorado and Hawaii, which have redistricting commissions, and the difference in the commissions themselves and the issues that they are facing.

Dr. Moncrief next discussed the issue of racial vote dilution, or the minority vote issue. In the past this has not been a major issue for litigation in the State of Idaho. However it is one thing the U.S. Supreme Court will pay particular attention to and it is the one area where

you can come in with a plan under 10% and it can still be struck down if there is evidence of minority discrimination. This is due to the Voting Rights Act of 1965 and the subsequent amendments. Two aspects of the voting rights act that are especially important are Section 2 and Section 5. As Section 5 only applies to jurisdictions where there has been past clear evidence of racial discrimination, Idaho is only covered by Section 2.

He then offered some humble recommendations for the commissioners. He encouraged them to use the staff provided. He stated it is very important to keep in mind that there are more issues than just partisanship; including counties, communities of interests, and regional balance. They must understand as the Secretary of State has said that there will be a lawsuit. Over 85% of all redistricting plans across the country have been litigated. Recognize the woeful history of Idaho plans before the courts because of the tendency to go above the 10% level. And finally Develop a thick skin as it does not matter what the plan is, a lot of people will not like it.

Chairman Andersen then asked that **Dr. Moncrief** to expand upon his discussion of communities of interest and traditional neighborhoods. **Dr. Moncrief** noted that he is not an attorney, however the term communities of interest often can be used to mean a city, a reservation, an ethnic or tribal group or any number of things so there is not a precise definition. He also suggested that traditional neighborhoods may fall in the category of communities of interest.

Dr. Moncrief then pointed out that the case law regarding redistricting was now considered to be mature, and that a three tiered standard has developed out of this. If the deviation is under 10%, as long as there is no evidence of other problems, the court will accept that. If the deviation is between 10 and 16% maybe the U.S. Supreme Court will accept this, only if it is in pursuit of a rational state policy. And finally any deviation over 16% would generally be considered not worth discussing.

In response to a question from **Commissioner Frasure** regarding the deviation that was struck down by the Idaho Supreme court following the 2001 redistricting, **Dr. Moncrief** advised that the deviation in that plan had been 10.69%. In answering a question from **Commissioner Moses** regarding the terms describing keeping counties whole whenever possible, **Dr. Moncrief** related that this question was likely above his pay grade but cautioned the commissioners to consider the issues of compactness, contiguity and keeping the population deviation under 10%.

Mr. Youtz then advised that as the meeting was running somewhat ahead he would contact **Mr. Kane** to advise as such. The meeting was then recessed by **Chairman Andersen** until 10:30 am.

Upon reconvening, **Chairman Andersen** welcomed **Mr. Brian Kane**, Chief Deputy Attorney General. **Mr. Kane**, on behalf of Attorney General Lawrence Wasden, wished the commission the best of luck as they take on this Sisyphean task. He explained that the purpose of his presentation was to take the commission through the legal requirements and procedural issues of Idaho redistricting in hopes of possibly precluding any litigation, or to help them be successful in any legal challenge to the plan. He reviewed that the commission is established by both constitution and the statutes. He outlined that the commissioners are subject to the following limits once they have served; they cannot become a candidate while the commission is housed, they cannot become a candidate for the legislature within 5 years of the plan which they have adopted, and they cannot serve on a future commission. Organizationally the commission is subject to Idaho Code 72-1505 in that they are subject to the open meeting law, and they must provide notice to citizens or organizations requesting notice. They must provide copies of the census database or any other databases that they use, to the citizens. Meetings must be held around the state for public input. And citizens can present plans to the commission which then become public record. These plans must include the citizen's mailing address and phone number. **Mr. Kane** further explained the Open Meetings Law (I.C. 72-1505(1)) as it applies to the commission. The commission must give notice of agenda and meetings per I.C. 72-1502(2), this notice must be 5 days prior to the meeting or 48 hours prior to regularly scheduled meetings. In answer to a question from **Chairman Andersen** regarding where these notices must be posted, **Mr. Kane** indicated that they must be posted at the place where the commission is housed and also at the place where the meeting will be held. He also noted that the notice will likely be placed on the commission's website, and stated that the more you can do to post these notices, the better. He went on to explain that a quorum is 4 commissioners (I.C. 72-1505(5)), which is necessary to make a decision, however fewer than this may take public testimony. He also explained that members must be present to vote (I.C. 72-1505(6)). **Mr. Kane** explained that there are provisions for executive sessions under the open meeting law, however he did not see any reason that the commission would need to go into executive session. He also cautioned the commissioners regarding email and suggested that they be very careful about using the "reply to all" button. He also pointed out that emails are considered public records. **Commissioner Moses** then asked if an email circulation could actually amount to a meeting

and **Mr. Kane** responded that this is what he calls a serial meeting in that emails are circulated and you find that you have deliberated, and come to a consensus, without ever physically meeting. In responding to a question from **Chairman Andersen** regarding personal email, **Mr. Kane** discussed that while doing the commission's business it may be difficult to distinguish between a business email and a personal email. He then cautioned them against what he calls a conversion email of which he gave the example of a friend or relative sending a commissioner an email and including in that correspondence something about the commissions' business. If the commissioner then brings up anything from this email the commissioner may have just made this public information, which could become an issue within a court challenge because there is no evidence of where this information came from. He cautioned the commissioners to try as much as possible to keep their commission and personal email separate.

Mr. Kane went on to explain that the public records law does apply to the commission. He explained that as long as a plan is in the secure rooms it is considered a draft, however the minute it exits the room it becomes public. One of the ways that it can exit the room is by a commissioner referring to a plan. So if you are discussing one plan and then refer to another plan that is in the secure room you have now made that plan public. In response to a question from Commissioner Moses regarding carrying a computer that has these plans on it **Mr. Kane** advised that this does not make the plan public. In response to a question from **Commissioner Frasure** about the nature of any plans which the commissioners may have been working on in the online version of Maptitude, **Mr. Kane** advised that these would not be considered public as they have not been entered into consideration by the commission. **Commissioner Frasure** then asked if while the commission is travelling through the state are they able to meet as a caucus and be afforded the same secure room protection as they have in the state house. **Mr. Kane** advised that his understanding is that wherever they may meet as a caucus they are afforded the same secure room protection. **Commissioner Frasure** then asked about the latitude that commissioners have to meet with various stakeholders. **Mr. Kane** reminded him that the operative number is 4 commissioners. If you are ever meeting and there are more than three commissioners present you may be in violation of the open meeting law. As long as you have three or fewer commissioners meeting, you should be fine. One other problem may be if the redistricting commissioners are meeting with county commissioners they need to be cognizant that there may be a quorum of county commissioners present. In follow up to another question from **Commissioner Frasure**, **Mr. Kane** indicated that one of the most frequent open meeting law questions that he receives is regarding county commissioners going to lunch together. His answer is that they can go to lunch together however they must not talk about business.

This said, his advice to the commission is that they consider if they want to put themselves in this type of position of having to resist the temptation to talk business. Also in response to a question about meeting with legislators he indicated that he was not aware of any limitations in meeting with legislators however cautioned that he would resist meeting with any group that may constitute a quorum.

Mr. Kane then got into the legal requirements of a plan. He explained that the court in Idaho has now created somewhat of a hierarchy beginning with one person=one vote, and then from there it goes to county splits and the rest of the requirements fall under those. First of all the constitution has limited the number of senators to between 30 and 35 and fixed the number of representatives at no more than 2 times the number of Senators (Art III, sec. 2 para.1. & Art III, sec. 4. In answer to a question from **Commissioner Moses**, **Mr. Kane** indicated that the commission could decide to create a plan with 35 Senators and 35 Representatives if they wished, however it has always been 2 Representatives and 1 Senator per district.

He then went on to explain that it is key for this commission to keep the deviation within 10% and to keep county splits to a minimum. He explained that the 10% deviation is presumptively constitutional so anyone that wanted to challenge a plan of this nature would have to prove that it was either irrational or unconstitutional. Looking at what the commission did last time, the first plan that came out had a deviation of 10.69%, and the court struck it down and sent it back. The next plan came back at 11.79%, and this was the Bingham County case. It all hinged on keeping the community of Island Park in a certain district and that resulted in splitting Bingham County and one other county. Since that plan exceeded 10%, the court essentially had to second-guess the commission. The court actually examined all of the plans that were under 10%, and this allowed the court to say, you could have kept this community of interest together without exceeding a 10 percent deviation. Therefore, if you go over 10%, it allows the court to second-guess you. In the Bonneville County case, where the plan was under 10%, the court said it would not second-guess the commission's split of Kootenai County because the plan was presumptively constitutional. **Commissioner Moses** then asked if the commission had the ability to redraw precincts. **Mr. Kane** indicated that the commission cannot redraw precincts but they can be split, which he would discuss later in his presentation.

Mr. Kane then went over secondary legal requirements. One of the sticking points in the prior cases was whether the legislature can authorize counties to be split, and the court found that requiring the legislature to authorize county splits would have the effect of putting the redistricting plans back in front of the legislature, and this would not give effect to the

creation of the citizen's commission. One is communities of interest (I.C. 72-1506(2)), like cities, as you don't want to cut a city in half if you don't have to, and the reservation has been advanced as a community of interest. Avoiding oddly shaped districts (I.C. 72-1506(4)) is a difficult one to quantify, and he illustrated by pointing out district 3 in northern Idaho and pointing out that Idaho itself is an oddly shaped state. The rest of these secondary legal requirements are that counties must be contiguous (Article III, sec. 5) with no floterial districts. Local precincts can be split as practical; however, it takes a vote of 5 commissioners to state it is impractical to make a plan without precinct splits (I.C. 72-1506(7)). Additionally districts containing more than one county must have an interstate or state highway road to connect the district, however again it takes a vote of 5 commissioners to avoid this (I.C. 72-1506(9)). Finally there should be no incumbent or party protection (I.C. 72-1506(8)). **Mr. Kane** stated that in addition to this you have to add in what he calls a reality wrinkle. He referred to the back page of his presentation (available in the commission office), of population to average district size, and which he used to show the difficult task that they have at hand. The key for the commission will be to show their work to keep a record as to why they have made their decisions.

Commissioner Kane then asked that the Attorney General's office be very active with the commission in helping them to develop a factual basis for their decisions so that they do not end up in the situation of having to hire a special master, which occurred 10 years ago, and possibly avoiding litigation altogether. **Mr. Kane** acknowledged that his office is available to assist the commission in any way that it sees fit. He advised that if the commission needs more involvement from his office to just say the word as his office has just as much interest in defending whatever plan the commission adopts as the commission. In response to a question from **Chairman Andersen**, **Mr. Kane** advised that he could arrange for more involvement from his office by the end of the day. **Commissioner Frasure** then asked **Mr. Kane** his thoughts on taking notes of the commission meetings, and whether these notes should be more detailed than, for example, legislative committee notes. **Mr. Kane** explained that later in his presentation he would be discussing a tool that has been developed to help the commission in recording their decisions. He explained that it is important that the commission recognize what are their decision points and to make sure when something needs to be entered into the record. In this way they will create the defensibility that they need to create within the plan. He noted that as long as you issue findings the court will defer to them and that historically perhaps the problem was in not documenting these findings. He explained that in a court case one party is going to have to work very hard, either the attorney or the judge, and if it's the judge the least likely you are to prevail in your case

because you are not getting to tell your story the way you want to tell it. That is why documenting your findings is so important. After some discussion within the commission, **Commissioner Kane** made a motion that the attorney general's office work closely with the commission so that findings can be documented and put together to provide justification for the plan eventually produced. **Chairman Andersen** then called for a second to the motion. At this time **Commissioner Frasure** pointed out that he did not believe that a second would be required for this commission of only six members. Commissioner Frasure inquired as to whether a member of the Attorney General's office would be needed at public hearings, or only at business meetings and Commissioner Kane clarified that it should only be necessary during meetings where decisions or discussions about decisions will be taking place, and not simply when public testimony is being taken. **Chairman Andersen** submitted the motion to the commission and requested that a vote be taken. As all votes were in the affirmative the motion passed.

Mr. Kane then continued by indicating that the commission's final report was due in 90 days (I.C. 72-1508). He indicated that if this did not happen for some reason it would go to the Idaho Supreme Court who could then adopt a plan or reconstitute a commission and order them to come up with a plan, as was done in the Bingham County case. **Commissioner Moses** then asked specifically how this would get to the court if a final plan was not submitted in 90 days. **Mr. Kane** indicated that someone would likely bring a case based on non performance against the Commission as a plan had not been submitted with 90 days. The plan is then filed with the Secretary of State and then is spread on the journals of the House and Senate. If the plan is challenged it goes to the Idaho Supreme Court per Article III, sec.2, Para.5 , as they have original jurisdiction over challenges. The court can then either adopt a plan or direct the commission to reconvene. **Mr. Kane** then went over the checklist which he had worked on with members of the legislative services staff (copy of which is available in the commission office) to assist in preparing findings for any court challenge. **Commissioner Frasure** then asked **Mr. Kane** to explain the word sisyphian which he had used to describe their task. **Mr. Kane** explained that Sisyphus was a character from Greek Mythology whose task was to roll a large boulder up a hill only to watch it roll back down and have to repeat this through eternity. He noted that as this process continued it began to feel like the boulder got heavier and heavier.

Commissioner Frasure then asked for a clear definition of communities of interest. **Mr. Kane** indicated that there is no clear definition of communities of interest. He gave the example from ten years ago when the commission considered Island Park as a community of interest. The court questioned why they kept this area together and split others. In this way the commission basically invited the court to weigh in on what a community of interest was. You can then compare that with what happened with plan L97; in that plan one of the communities of interest was the Coeur d'Alene tribe, and the court said because this was under the 10% variation they allowed the commission their discretion to have this as a community of interest. He indicated that the key for a community of interest is that the commission has to identify it as such and then provide justification of like minded people living together. He then gave an example of possibly Boise's north end being a community of interest because of its unique nature. Ask yourselves, what is the point of commonality, what makes it a community?

Commissioner Frasure then asked **Mr. Kane** for some guidance in dealing with county lines, as opposed to community of interest lines, as in the case of reservations. In answer to this **Mr. Kane** went over again the two key areas that the commission must consider, number one being one person=one vote, and number two being the county divisions and then everything else lines up under that.

In answer to a question from **Commissioner Frasure** regarding precincts, **Mr. Kane** explained that coming up with a plan is a little like coaching a football game, come Monday morning everyone is an expert. The key here is that the court has said that the commission has discretion which it will not invade unless you give us a reason to get involved. That key is no deviation over 10% and minimal county splits. The best plan is a constitutionally defensible plan, as long as the plan is constitutionally defensible the courts should stay hands off and that's why they don't get into precinct by precinct picking. **Chairman Andersen** then asked the commission if there were any further questions. As there were none he thanked **Mr. Kane** and advised that they looked forward to working with him in the future. **Mr. Kane** advised the commission to feel free to contact him at any time with questions.

Commissioner Frasure then indicated as they were ahead of schedule he would like to have former commissioner Haagenson go ahead and address the group.

Staff member Kristin Ford then suggested that they skip ahead in the agenda and go over Maptitude at that time.

Chairman Andersen stated that as he felt it would be more beneficial to have both of the prior commissioners speak together, it would be best to do the Maptitude overview now.

Kristin Ford and **Keith Bybee** then went into the introduction and overview of the Maptitude software. **Ms. Ford** started out by saying that she was glad to have the commissioners here, as it had been hard to know what her bosses wanted before they got here. She went over the process of surveying other states for input on the mapping software, and that out of the two main products on the market Maptitude was easier for a lay person to get up and running. She explained that they also wanted the availability to put the system on the website for the public's use and it turned out that the Caliper Corporation, which sells Maptitude, had been working on that type of product at the time. In hindsight, she explained that this was a good choice as it appears that the other product is currently having some problems.

Ms. Ford then went over a census graphic which shows where the major population shifts in the state have been.

Keith Bybee then did a brief overview of Maptitude as it appears on the website and how it works. He explained the plan manager screen which drives the whole discussion of where you are working. He showed them the blank congressional plan and explained the windows, which include the map of the state, and the redistricting toolbox. From this toolbox you can select the layers which are the levels on which the census is built, such as counties, precincts, voting blocks, etc. The next screen is the pending changes box which shows what you have added or subtracted. He then showed how you can turn on and off the different levels and showed how at the bottom of the screen it tells you how many districts you have and the deviation. He explained that the online version is very similar to the software loaded on their machines; however, their version has more detailed information.

In response to a question from **Commissioner Frasure** regarding importing maps that have been completed on the website to their laptops, **Mr. Bybee** advised that these could be imported easily. **Commissioner Frasure** followed up with a question about importing public plans to consider. **Mr. Bybee** indicated that the online system and the system on the laptops talk to each other very well. **Commissioner Frasure** then asked if there is a way to put the statutory requirements and code items out on the website for the public to use in drawing their plans. **Mr. Bybee** deferred to the commission on how to give the public better direction on the website. **Ms. Ford** then pointed out that there are guidelines on the website that they

hope the Maptitude users will read, and that not allowing precincts to be split might hinder the drawing of plans.

Mr. Bybee then went on in his presentation. He illustrated the layers he had been talking about by focusing in on Pocatello, his hometown, and showed how you can zoom from the precincts down to the block level numbers.

Chairman Andersen asked if you pull up precincts, will it show the population census information. **Mr. Bybee** and **Ms. Ford** indicated that this is correct.

Commissioner Frasure then indicated that he had a concern that the map was inaccurate. He pointed out that it shows Pocatello in the city of Chubbuck. And he is worried that the information on the precincts is not correct. He indicated that there was an area in Ada County which he drove out to which shows over 2,200 people in the block; and he did not see a single house there. **Chairman Andersen** asked **Commissioner Frasure** if he was out near the prison when he noted this discrepancy. **Commissioner Frasure** noted that the area he was in was at the end of Cole Road, and that he found blocks with big populations in it and he has questions on the lines. After trying to find this area on the map with the help of **Mr. Bybee**, **Chairman Andersen** suggested that **Commissioner Frasure** and **Mr. Bybee** meet separately to look at this area. At this time the group recessed for lunch to reconvene at 1:30 pm.

Chairman Andersen reconvened the meeting at 1:30. At this time he introduced **Mr. Dean Haagenson** and **Mr. Tom Stuart**, who had served as commissioners ten years ago, and asked them for some words of advice.

Mr. Dean Haagenson began by stating he had a couple of items to offer that would be of use to the commission. First he asked the commission to remember their responsibility to the citizens of Idaho, not their political parties. He indicated that one mistake he feels that the prior commission made, was that they started at the Canadian line, came down west and then went east in drawing their lines. He urged the group not to do this. He suggested that they start at both ends and then come back towards Ada County. He discussed how the court seems to think it is best not to split any counties lines if there is any possible way you can avoid it. Also if you are under 10% deviation the presumption is that you are constitutional or if you are over you have to show the reasons why you did that. He feels that the prior commission did not give a rationale for what they did and urged the current commission to do that. He stated that in not doing this the prior commission got pushed into a plan that was far worse than their first two plans and that ended up resulting in two very

bad districts, one of which is the reverse C in Bonner, Shoshone and Benewah and circles around Kootenai County. He advised the commission to draw a plan under 10% deviation that crosses county lines to make good compact districts of common interest, and if it's under 10% and you can show good documentation of why you did this, you will be successful.

He pointed out that the commission will mostly enjoy their service; they will learn about the state and will also get to know each other. He also stated that they will probably make enemies along the way, which is unavoidable. He then expressed that as having experience in redistricting via the legislature and then going through redistricting with a commission, he would pick the legislature as they know the state from border to border and understand the communities of interest.

Mr. Haagenson closed by stating that he is fully sure that what the current commission comes up with will be more successful than the prior commission. Stay under the 10% and don't split counties willy nilly but split them when you need to. Remember your responsibility is to the people of Idaho. He then wished the commissioners luck and god speed.

Chairman Anderson then called on **Mr. Stuart** to address the group. **Mr. Stuart** advised the commission that they will likely get far more input than they want in the days and weeks to come. He advised they will need a thick skin; however their calluses will grow quickly if they do not already have them. Recognize public theater for what it is. Be ready to get on with the task because it is the citizens of Idaho that this is about. There were a few lessons that he recalled from his experience, first was that neither side can expect quick approval for a plan that one party has created independently. They explored different parts of the state in teams of two. He explained that plans submitted up front are useful in finding common ground; however the final plan should be developed jointly. He acknowledged that keeping counties whole is important, he indicated that understanding this sooner would have saved their commission time. He also suggested that they assume their plan will be challenged in court, as theirs were. He noted that someone will be unhappy with any plan, so it is important that you articulate the rationale for any district you create. He explained that they had to hire private counsel to help them articulate the record to present to this court. He explained that it is an error to design districts to protect incumbents, who will eventually fall by the wayside anyway. He suggested that a good plan will seek to provide representation for communities of interests so that everyone has a seat at the table.

Mr. Stuart stated that he was not sure that they had painted themselves into a corner, as previously mentioned by Mr. Haagenson, in drawing the districts. However he felt that the

court decision painted them into a corner, as once they were told that Bannock County must remain whole there was no way to create a pretty district. He advised the group that he felt there is no perfect way to redistrict however believes the commission is the better way to do this than the legislature. He stated an item of major importance is to build and safeguard relationships within the commission as you move forward. He explained that it is a challenge to work past partisanship which permeates this process. Compromises are necessary to move forward. He also suggested that they demand civility and good manners from themselves and from those who give personal comment to the commission.

He expressed a concern due to the political climate that we see nationally and state wide. He urged the commission to set aside rigid ideological purity. He pointed out that there is no single right answer, and if you work together and compromise you can find a good answer. He discussed that his group had good luck in working in teams of two on different areas of the state. And finally he then urged the commission to keep Boise City and Ada County intact.

Chairman Andersen then asked **Mr. Stuart** to expand on the teams of 2 which they previously used.

Mr. Stuart explained that during meetings and normal functioning they tasked two commissioners, one republican and one democrat, to focus and explore different areas of the state such as northern or southwest Idaho. They were to see where they might find areas of agreement and then bring these ideas back to the entire commission for further discussion. They then tentatively adopted portions of the plan as they worked through the state.

Mr. Haagenson then added that if there is any one county that you may be able to divide evenly it would be Ada County. He reiterated that he believes if the commission stays under the 10% deviation, and can document to the court the rationale for crossing county lines and doing what they did, then the plan should stand.

Commissioner Moses then asked why he thinks that keeping communities of interest would trump keeping counties together when everyone else is stating the opposite. **Mr. Haagenson** stated that if you are going to minimize county splits you are going to have horrible looking districts so to him it makes more sense to keep people together who have common interests. **Commissioner Moses** asked if a county would be considered a community of interest. **Mr. Haagenson** stated it makes sense to him to keep the same type of areas and the same types of people together.

Mr. Stuart then added that as he has been looking at the information on the website and it appears to him that the two ugly districts that they ended up with last time have taken care of themselves. He stated that this situation doesn't exist anymore due to the population characteristics of those counties at this time. He then urged the commission not to worry too much about those prior problems but to build a plan that can have it both ways, where you can keep the counties whole and avoid ugly districts.

Chairman Andersen asked **Mr. Stuart** and **Mr. Haagenson** to share their thoughts regarding urban and rural districts.

Mr. Stuart indicated that if you ask someone where they are from they normally say the city. He explained that we identify with the cities in which we live, and if you don't live in a city you identify with your county, so he feels that these are communities of interest. He noted that he is a big fan of keeping these communities of interest together, and he indicated that as the populations now stand the commission will probably be able to keep cities together. He indicated that if he were a mayor in Idaho he would suggest that instead of starting at the edges of the state that you start at the city cores and work out from there. **Mr. Haagenson** did not agree with the idea of starting with Boise and working outwards as he believes this would cause problem districts in the rural areas.

Commissioner Frasure advised that he tended to agree with **Mr. Haagenson** regarding the rural areas. He was curious about the district which runs from downtown Twin Falls to the Oregon border. **Mr. Haagenson** expressed that this was an unwieldy district, but discussed how the shape of Idaho as it is, and being so rural, makes the job more difficult to achieve compactness. **Mr. Stuart** recalled that this district had been driven by circumstances in surrounding counties. First he explained that most of Twin Falls was part of a district that ran east out to Kimberly to take in the north east corner of Twin Falls County and the bulk of Twin Falls City, which was a horse trade to protect Senator Laird Noh. That combined with coming west and looking at Ada County, which had enough population to make 8 districts undivided, they were constrained on Ada County. So they had to connect the geography, and if you really stretch it you can combine the agriculture and ranching interests from western Twin Falls to Owyhee County, but it was not perfect.

Commissioner Frasure indicated that he felt it would have been a better match to combine Owyhee and Canyon County. **Mr. Stuart** agreed that this absolutely would have been a better match. **Commissioner Frasure** then asked for their thoughts regarding the guidelines that the legislature put forth to try to maintain precinct lines and to have districts

connected by a highway system, passed with overwhelming bipartisan support, including Mr. Stuart's wife, Rep. Pasley-Stuart. **Mr. Stuart** indicated that the precinct issue is generally not a problem unless the county is experiencing a lot of rapid growth, and that in most of the rural areas the precincts didn't need to change.

Commissioner Frasure then discussed that county clerks can annually change precinct lines when they want for the convenience of the voters. As these can be changed he doubted that the commission's role should be as a Super County Clerk in changing these precinct lines. **Mr. Haagenson** then indicated that what the commission is faced with is a lot of conflicting elements, such as county lines, geography, etc. He indicated that now with the added requirement that you have a state or interstate highway connect the district he noted that this may be difficult to accomplish. **Commissioner Frasure** then commented about adding the requirement about a state or interstate highway to connect the district. He indicated that the legislature passed this overwhelmingly, with bipartisan support, and asked how the former commissioners felt about this. **Mr. Haagenson** suggested that this was just one more complication and suggested that the legislature voted for this because they had not sat in a redistricting commissioner's chair. **Mr. Stuart** indicated that he understood the reasons for this requirement, and although it may make their job a little harder they will have to do the best they can while complying with as many requirements as they can.

Commissioner Moses then asked what **Mr. Stuart** and **Mr. Haagenson** thought of the meeting schedule as proposed. As **Mr. Stuart** and **Mr. Haagenson** had not seen the schedule they did caution that the 90 days goes by very fast and suggested that the commission meet more often than not. **Commissioner Moses** asked if all 97 plans submitted were voted on by the previous commission. **Mr. Haagenson** and **Mr. Stuart** indicated that not all 97 were voted on, some of the plans were exploration plans used for discussion. **Commissioner Frasure** indicated that the schedule proposed feels rushed to him and perhaps they needed more time at each area, and he asked the former commissioners for their thoughts. **Mr. Stuart** indicated that this process will feel rushed no matter how you do it, and that the 90 days will fly by. He noted that the main question he sees for this group is how to deal with the sheer volume of input that they will receive. He explained that they may have to rely on submitted input more than the public hearings. **Mr. Haagenson** thought that perhaps the commission should spend some time together as a group prior to the public hearings.

Chairman Andersen asked if the prior commissioners had any public follow up hearings after the initial hearings. **Mr. Stuart** recalled one hearing late in the process in Idaho Falls

after the original plan had been overturned by the court. He found that very valuable as it was very focused on how to handle Bannock County.

Commissioner Moses stated he is more concerned with the meeting time after the public hearings and was wondering if it was better to spend their time together or apart. He also wanted some input as to how much preparation time is needed to prepare for a public meeting. **Mr. Stuart** urged that they stay flexible, if it makes sense to add meetings stay open to that, or maybe work in small groups and share via email and phone. He explained that it really depends on how quickly the commission moves as the 90 days goes fast.

Chairman Andersen then thanked the former commissioners for sharing their time and interesting thoughts for the commission to consider.

Chairman Andersen then moved to a review of the Commission's Appropriation and Expense Vouchers and called on **Mr. Keith Bybee**.

Mr. Bybee explained that they received two separate appropriations, as this process falls in two separate fiscal years, the total of which is \$424,700. He pointed out that a little over 55% of their current expenditures occurred in fiscal year 2011, and that as of May 31st \$178,400 has been expended. These costs were related to GIS workstations, monitors, a plotter, the Maptitude software and the online software. He also explained that we have brought on a GIS consultant to help with all of the day to day resources that the commission and their partisan mapping assistants will need. He explained that this is a fluid plan and gave the example of initially thinking that the partisan staff would come on as employees and that as new things came to light this was changed to bring these mapping assistants on as contractors. These types of items are the difference between the original plan submitted and the plan as it appears today. He then went over the budget items and the expenditures to date. He pointed out that there is a large budget for travel, and that all of the capital expenditures have been made.

Commissioner Frasure asked how much of the amount left did the commissioners have control over. **Mr. Bybee** indicated that there is \$246,300 available as of May 31st. He pointed out that there is a great deal of flexibility in the travel budget for them to decide where to go and how to travel. He also indicated that there may be some savings in the amount budgeted from some of the capital equipment. He stated that he believes there is room to do what the commission wishes.

Commissioner Moses then asked what the assumption was made in the travel to the hearings in northern Idaho. **Mr. Bybee** explained that specifically to north Idaho they had

followed the same time line as the previous commission and that the travel budget specifically should take care of the travel there and back and per diem. In response to a follow up question by **Commissioner Moses** regarding the specific mode of travel **Mr. Bybee** indicated that they had considered flying to northern Idaho.

Chairman Andersen then asked about litigation materials noted. **Mr. Bybee** indicated that the litigation materials were considered due to the previous commission which hired outside counsel after the first suit was brought and lost. This was included as a place holder, however outside counsel would likely be a bit more than that as the cost ran just over \$100,000 last time.

Chairman Andersen then asked **Mr. Bybee** to move on to the next agenda item. **Mr. Bybee** then went over the travel guidelines and report form which was prepared for them to track their expenses.

In answer to a question from **Commissioner Frasure** regarding hotel bills, **Mr. Bybee** indicated that those could be direct billed to the state if that is the commission's preference.

As there were no further questions **Chairman Andersen** stated that he was sure that the absence of questions didn't mean that everyone understands and that other questions will likely come up.

Commissioner Kane then indicated that as there are three meetings set for the Idaho Falls area the following week she would get with the staff this afternoon to arrange flights from Lewiston. **Mr. Bybee** suggested that there was time blocked off the following afternoon to talk about the travel schedule but agreed that to complete the work and consider travel costs that she was right to move on this as quickly as possible. **Mr. Bybee** indicated that he is always available to help with questions regarding travel and expenses.

Commissioner Moses then inquired regarding the honorarium and how it works. **Mr. Bybee** indicated that the commissioners don't have to meet as a Commission to earn the honorarium, however at least three of them need to be together to earn the honorarium. **Mr. Bybee** then went over the invoice for the mapping assistants that would need to be submitted for them to be paid, and requested that a commissioner sign off before it is submitted. **Commissioner Frasure** suggested that this subject would be discussed further the following day.

Mr. Bybee then went over the next forms which the commissioners would need to fill out such as a W4, emergency contact, PERSI information and the photo I.D. form. In response to a question from **Commissioner Moses**, **Mr. Bybee** confirmed that the forms needed to be filled out and returned to him. **Chairman Andersen** inquired how soon the forms needed to be returned and **Mr. Bybee** indicated that Thursday morning would be preferable.

As there were no other questions or comments, **Chairman Andersen** thanked **Mr. Bybee** and called for a break until 3:10 pm.

Chairman Andersen reconvened the meeting at 3:15 and called on **Kristin Ford** for a discussion of Policies and Procedures.

Ms. Ford explained that the prior commission had set forth their policies and procedures however this commission was certainly not bound to any of these policies. She did state that it may be useful to adopt some policies and procedures. She suggested that the commissioners review them and discuss them further during the time allotted the next day.

She indicated that she did not include the Idaho Statutes in the Policies and Procedures, however they could be added if the commission wished. She then went over the first five items in the draft of the policies and procedures as adopted from the previous commission.

Chairman Andersen then asked regarding item #5 how often did the previous staff call to verify a plan and found any type of a problem. **Ms. Ford** indicated that she never heard of any problems of this nature however she could try to obtain that information for the commission. **Commissioner Moses** asked if we could anticipate how many plans will be submitted to determine how many calls would need to be made. **Ms. Ford** indicated that she would anticipate more inputs than last time as it is more accessible this time, however just how many is unknown.

Chairman Andersen indicated that he would recommend that the commission hold to consider all policies after they have had a chance to review them. **Commissioner Kane** indicated that she believed there would be too many plans submitted to have the staff call on all of them, but would like to reserve the opportunity to have any questionable plans verified. **Chairman Andersen** indicated that this is why he wanted to know how many were called on last time that had problems. **Commissioner Frasure** speculated about whether games might be played in submitting plans and indicated that he would like the language available,

for the meeting tomorrow, to add using the staff to verify the plans. **Ms. Ford** indicated that she would prepare that wording for possible use.

Commissioner Moses then asked if you have to be an Idaho resident to submit a plan.

Ms. Ford answered that the code does not prevent a non-resident from submitting a plan, but this is something that the commission could consider.

Ms. Ford then went on with items #6 and #7. She indicated that we are now taking advantage of technology and that we are digitally recording the meetings to aid in making the minutes of the meetings, and for future use should they be needed. She also indicated that Idaho Public TV will be streaming the meetings and hearings and that they are available to archive as well. **Chairman Andersen** asked if someone wanted to review the actual hearing who they would contact to obtain that. **Ms. Ford** explained that if the commission authorizes Idaho Public TV to archive the tapes these could be made available thru IPTV or we could house copies of the tapes to provide directly.

Commissioner Kane then suggested that this may need to be a place that they add a separate provision regarding legal counsel and what their role is and how they will document findings and justification for their findings. She suggested that they needed to add something regarding the extent of the attorney general's involvement and role. **Chairman Andersen** inquired if this should be added to provision #7. **Commissioner Kane** suggested that it be separate from the provision, perhaps right after it. She suggested that it include that they will document what's going on regarding a legal basis and to provide guidance and advice along the way. **Commissioner Kane** suggested that she can help draft up a suggestion along these lines.

Ms. Ford then went over items #8 through #12.

Commissioner Frasure indicated that he felt the commission needed to take a serious look at the last line in #10 regarding partisan staff. He stated he would be happy to draw up his thoughts on the partisan staff activities. He also indicated that he had no problem allowing that a second not be required for this commission. **Commissioner Moses** indicated that he believed that a second would be needed when submitting a plan, however did not believe it would be necessary on anything else. **Commissioner Frasure** added that he would also like to require all 6 commissioners be present to consider a plan. He also had a question regarding the minutes and inquired if the videos of public testimony would constitute official notes. He suggested that the attorney general's office be asked whether the minutes would

become the official record as is normal and how the video would impact this. **Ms. Ford** indicated she would obtain that information.

Commissioner Frasure then suggested another item that they might want to add to the policies and procedures regarding travel days during the public hearings. He suggested that since they may be limited to just a couple of days in each area, that perhaps that day before the hearings be considered a work day, in that location, to meet in the mobile secure rooms with constituents or legislators. He suggested that this additional time to meet with people to take input may be helpful in avoiding lawsuits due to lack of communication. In response to a request for clarification from **Ms. Ford**, **Commissioner Frasure** indicated that he is talking about the secure room moving with the commission as they travel to the public hearings and using this as an opportunity to talk to more people than just during the public hearings. Commissioner Moses inquired if he was saying that a day of travel before a public hearing would be considered an official business day if a commissioner met with constituents. Commissioner Frasure affirmed this understanding.

Chairman Andersen suggested that he sees two issues, the budgetary and legal issues involved.

Commissioner Frasure indicated that this was the reason he asked the question of the attorney general about open meeting laws and inviting anyone they wished into their secure rooms. As he understood, if there are not four commissioners present they are not in violation of the open meeting law during such private meetings.

Chairman Andersen indicated that this should be drafted up so that it could be reviewed and discussed further the following afternoon.

Kristin Ford then suggested that this discussion seemed to be somewhat of a payroll issue and that the policies and procedures really don't cover budgetary items, however she could certainly draft up something for their review.

Chairman Andersen indicated that this could have a budgetary impact so he was not quite sure how to approach this but if it impacts the budget adversely he may oppose this.

Commissioner Frasure then indicated that this was the reason that he asked about how much of the budget they had control over. He indicated that it sounds like the legislature has been very generous in providing adequate funds to function. **Chairman Andersen** commented that these were some interesting points which they would want to discuss the following day.

Keith Bybee then addressed the commission regarding the calendar which has been proposed based on what the previous commission had put in place. He pointed out that the commission is not bound to the meetings, as proposed, from here on out. He indicated that the first public hearing was scheduled for this evening, in the same room, from 7-9pm. He indicated that tomorrow after the training and afternoon meeting there was a public hearing scheduled from 7-9 pm in the Caldwell High School Auditorium. Following that on Thursday from 9 am to 12 pm there was further Maptitude training scheduled. He then moved into the following week which had scheduled June 15th 2-4pm in Idaho Falls, then from 7-9 pm that evening in Pocatello, and on the 16th in Twin Falls. Moving forward to the following week was scheduled June 22nd in Coeur d'Alene, and then on the 23rd in either Moscow or Lewiston. Then the following week on June 29th in Boise for a working meeting, and that evening another public hearing in Meridian from 7-9pm. Then into July meetings would resume on July 13, 14, and 15th in Boise for working meetings, and then again on July 27, 28 and 29th. Into August the 8th, 9th and 10th, were scheduled for working meetings and then again the 15th, 16th and 17th.

In answer to a question from **Commissioner Kane**, **Mr. Bybee** indicated that the final day for submission is Sunday, September 4th. After some discussion regarding this date **Commissioner Frasure** reminded everyone that they were not bound to follow this schedule and indicated that hopefully the commission could look over the calendar over the evening and check their own schedules so that they could create a schedule that works for everyone. He then made a motion that the commission adjourn. As all were in agreement the meeting was adjourned by **Chairman Andersen** at 3:58 with a tour of the secure rooms to follow.

